

REMARKS

Claims 1-21 are pending in the application.

Claims 1-21 have been rejected.

Rejection of Claims Under 35 U.S.C. §103

Claims 1-21 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,854,889 issued to Liese et al. (“Liese”) in view of U.S. Patent No. 6,618,854 issued to Mann (“Mann”).

In order for a claim to be rendered invalid under 35 U.S.C. §103, the subject matter of the claim as a whole would have to be obvious to a person of ordinary skill in the art at the time the invention was made. *See* 35 U.S.C. §103(a). This requires: (1) the reference(s) must teach or suggest all of the claim limitations; (2) there must be some teaching, suggestion or motivation to combine references either in the references themselves or in the knowledge of the art; and (3) there must be a reasonable expectation of success. *See* MPEP 2143; MPEP 2143.03; *In re Rouffet*, 149 F.3d 1350, 1355-56 (Fed. Cir. 1998).

Claim 1: Independent Claim 1 contains limitations of the following form:

an NVT server coupled to the at least one probe network device, wherein

the NVT server is configured to translate parameters entered by a user to instructions executable by the at least one probe network device,

the NVT server is configured to transmit the instructions to the at least one probe network device hosting the task type, and

the at least one probe network device is configured to execute a process corresponding to the at least one task type in response to the instructions.

See Claim 1. The Office Action admits that Liese fails to provide disclosure of the “configured to translate parameters” and “configured to transmit the instructions” limitations. *See* Office Action, p. 3. Instead, the Office Action relies upon Mann for the provision of these claim limitations. *Id.* Applicants respectfully submit that neither Liese nor Mann provides disclosure of the above-claimed limitations.

The Office Action correlates Liese’s disclosed execution server with the claimed NVT server. Applicants agree with the assertion of the Office Action that Liese fails to provide disclosure that Liese’s execution server is either “configured to translate parameters entered by a user to instructions executable by the at least one probe network device” or “configured to transmit the instructions to the at least one probe network device hosting the task type.” Instead, Liese clearly discloses that the execution server merely performs a supervisory role over the disclosed custom servers by prioritizing and scheduling test requests received from the disclosed client machines. *See, e.g.,* Liese 3:64-4:28. Applicants submit that the system disclosed in the cited sections of Liese has no need for translation because the disclosed test cases generated by the various client machines are in a format ready for execution by the custom servers, and need only to be queued up for execution by the custom servers by Liese’s execution server. *See, e.g.,* Liese 3:22-28.

The Office Action cites to Figures 4 and 5 of Mann as providing purported disclosure of the limitations missing from Liese. Mann provides an integrated debug environment (IDE) that purportedly allows a remote user to interface with the IDE as if he were a local user and to execute programs generated remotely on a processor coupled to the IDE. *See* Mann 2:65-3:3. Mann’s IDE purportedly provides for loading a program

from a remote terminal to a host computer that then translates the source code of the user program into object code for execution by a target processor. *See* Mann 8:35-40. Mann's target processor is disclosed to be a microcontroller or microprocessor for which the remote user is testing their program code. Mann provides no indication that such a processor corresponds to a "probe network device coupled to the network under test," as claimed. In fact, there is no indication at all that the disclosed target processor is coupled to any network.

Further, there is no indication within Mann that the target processor is "configured to host at least one task type." Therefore, Applicants submit that Mann cannot be said to provide disclosure of "the NVT server is configured to transmit the instructions to the at least one probe network device hosting the task type," as claimed.

Finally, Mann provides no disclosure that the target processor is "configured to execute a process corresponding to the at least one task type in response to the instructions." In fact, Mann only provides that the source code provided by the user is translated into object code that is ultimately executed by the target processor. *See* Mann 8:38-40. Thus, Mann teaches away from the target processor executing anything else but the translated source code in response to receiving such code.

For at least these reasons, Applicants respectfully submit that the Office Action does not establish the presence of the above-quoted limitations in either Liese or Mann, alone or in combination. The burden is on the Examiner to support a case of obviousness, including whether the prior art references teach or suggest all of the claim limitations. *See* MPEP 706.02(j). In addition, Applicants also respectfully submit that the Office Action has not satisfied the burden of factually supporting the alleged

motivation to combine Liese with Mann. This duty may not be satisfied by engaging in impermissible hindsight; any conclusion of obviousness must be reached on the basis of facts gleaned from the references themselves. The Office Action must therefore provide evidence to suggest the combination and “[b]road conclusory statements regarding the teaching of multiple references, standing alone, are not ‘evidence.’” *See In re Dembiczak*, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). Further, the Office Action does not establish that such a combination of the teachings of these references would meet with success, as required.

As stated above, and as disclosed numerous times throughout the disclosure of Liese, there is no indication within Liese that the parameters provided by Liese’s client machines are not already in the form required by the disclosed custom servers. In fact, throughout the disclosure suggests that what is provided by the client machines to the execution server, including any editing performed by a user of a client machine, is ultimately provided to the custom server in the form generated by the client machine. Applicants therefore respectfully submit that, given this disclosure of Liese, a person of ordinary skill would not be motivated to modify Liese to provide any type of parameter translation to instructions, as claimed. Nor would a person of ordinary skill be motivated to couple Liese with the disclosure of any other reference that might provide such functionality, such as Mann.

The Office Action suggests that such a combination would “provide the client of Liese with interface programs written in platform independent language making the clients of Liese more versatile in testing the network.” *See* Office Action, p.4. But Liese already discloses that the disclosed client machines are platform independent. *See, e.g.*,

Liese 5:64-67 (“The client simply communicates which test cases are to be executed to a client machine. Client machine may be any kind of machine, such as a PC (Personal Computer), a processor card, UNIX platform, etc.”). Liese gives no indication that the client machine platform has any bearing on the information provided by the client machine to Liese’s execution server.

Further, Applicants respectfully submit that Liese provides no disclosure of the desirability of passing executable instructions from the execution server to the various disclosed custom servers. Liese’s execution server is disclosed to merely prioritize jobs and then queue them to the custom servers. The parameters provided by the client machines are disclosed to be usable by the custom servers. Indeed, the execution server is disclosed to access little to none of the parameters actually provided by the client machines, because such information is disclosed to be stored in various databases or other shared storage. *See* Liese 7:32-8:11.

Finally, Applicants respectfully submit that even were a Java-based interface used, as suggested by Mann, there is no disclosure or suggestion in the cited sections that such an interface would not store the parameters for Liese’s custom servers in a format required by the custom servers. Indeed, storing parameters in an unusable format would be a radical departure from Liese for which there is no support.

Applicants further respectfully submit that the Office Action fails to provide any argument supporting a likelihood of success in combining Liese with Mann. As discussed above, Liese provides disclosure of a system that can purportedly receive test case requests from the disclosed client machines, prioritize and queue those test case requests using the disclosed execution server, and then providing those test cases per their

priority to the disclosed custom servers. There is no disclosure within Liese that the information provided by the client machines is in the form of “source code” such as that described by Mann. Nor is there any disclosure within Liese of the need to transform the test case requests received from the various client machines into executable code for the custom servers, as suggested by the compiling that occurs within the IDE of Mann. In addition, there is no indication within Mann that the disclosed target processors can be used to execute network test cases such as those described by Liese. Nor is there any indication within Mann that the IDE can merely prioritize and queue untranslated task requests such as those provided by Liese’s client machines.

For at least these reasons, Applicants respectfully submit that the Office Action fails to present a *prima facie* case of obviousness of independent Claim 1, and all claims dependent upon Claim 1 (e.g., Claims 2-8 and 21), and that they are in condition for allowance. Applicants therefore respectfully request the Examiner’s reconsideration and withdrawal of the rejections to those claims, and an indication of the allowability of same.

Claims 9, 17 and 19: Independent Claims 9, 17 and 19, while having limitations of a different form from that of Claim 1, have each been rejected using a combination of Liese with Mann to overcome the lack of disclosure within Liese of a “translating” limitation. *See, e.g.*, Office Action, p.7 (Liese “doesn’t explicitly specify translating by the customer server the parameters into instructions executable by the probe network device.”); *see also* Office Action, pp.13 (Claim 17), 15 (Claim 19). Applicants traverse these rejections by incorporating the discussion above related to a similar limitation in Claim 1. For at least these reasons, Applicants respectfully submit that the Office Action

fails to present a *prima facie* case of obviousness of independent Claims 9, 17 and 19, and all claims depending therefrom (Claims 10-16, 18 and 20), and that they are in condition for allowance. Applicants therefore respectfully request the Examiner's reconsideration and withdrawal of the rejections to those claims, and an indication of the allowability of same.

Claims 6 and 13: Dependent Claims 6 and 13 each contain limitations of substantially the following form:

The apparatus of Claim 4, wherein the session emulator task type is selected from the group consisting of a multi-protocol session emulator, a LLC2 single protocol session emulator, and a SDLC single protocol session emulator.

See, e.g., Claim 6. The Office Action admits that neither Liese nor Mann provide disclosure of a session emulator task type or of the listed session emulators. *See* Office Action, p.9. Instead, the Office Action takes Official Notice that "these session emulators are well known in the art" and that it would have therefore been obvious to provide the session emulators as test cases. *Id.* Applicants respectfully traverse this rejection.

The independent claims upon which these dependent claims depend provide for the claimed "at least one probe network device" to be configured to host at least one task type. Dependent Claims 4 and 11, from which Claims 6 and 12 depend, claim a list of different task types including a session emulator task type. In rejecting Claims 4 and 11, the Office Action posits that the only listed task type provided in either Liese or Mann is a traffic generator task type. There is no suggestion made that Liese or Mann disclose a session emulator task type. But Claims 6 and 12 require a session emulator task type, not a session emulator, which is what the Office Action states is known in the art.

Applicants respectfully submit that since there is no disclosure of a component in either Liese or Mann that can fulfill the function of a session emulator, it would be inappropriate to provide a session emulator task type, as suggested by the Office Action. Further, while the Office Action posits that a session emulator was known in the art at the time of the invention (a position with which Applicants do not necessarily agree), there is nothing to suggest that a session emulator task type for one of the disclosed custom servers of Liese was known or appropriate.

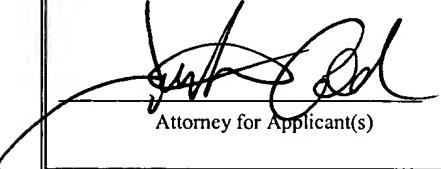
For at least these reasons, Applicants respectfully submit that neither Liese nor Mann, nor the Official Notice taken in the Office Action, provides disclosure of all of the limitations of Claims 6 and 12 and all claims depending therefrom. Therefore, Applicants respectfully request the Examiner's reconsideration and withdrawal of the rejections to these claims and an indication of the allowability of same.

Claims 7, 8, 14 and 15: As with Claims 6 and 12, the Office Action takes Official Notice of types of large network emulators (Claims 7 and 14) and device query tasks (Claims 8 and 15) in rejecting these claims. For reasons similar to those stated above, Applicants respectfully submit that such Official Notice is not on point as to the claimed tasks. For at least these reasons, Applicants respectfully submit that neither Liese nor Mann, nor the Official Notice taken in the Office Action, provides disclosure of all of the limitations of Claims 7, 8, 14 and 15 and all claims depending therefrom. Therefore, Applicants respectfully request the Examiner's reconsideration and withdrawal of the rejections to these claims and an indication of the allowability of same.

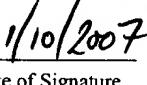
CONCLUSION

In view of the amendments and remarks set forth herein, the application and the claims therein are believed to be in condition for allowance without any further examination and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned at 512-439-5090.

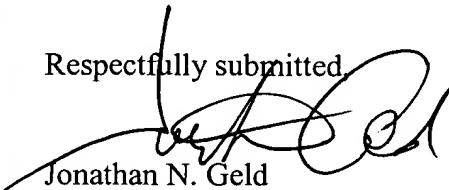
I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop Amendment, COMMISSIONER FOR PATENTS, P. O. Box 1450, Alexandria, VA 22313-1450, on January 10, 2007.



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Date of Signature

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